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**JAN 25 2006**

**OFFICE OF PETITIONS**

In re Application of Arthur Charles Ley et al.  
Application No. 10/038,722  
Filed: January 8, 2002  
Atty Docket No. D0617.70005US01

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: DECISION ON APPLICATION  
: FOR  
: PATENT TERM ADJUSTMENT  
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This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705", filed September 21, 2005. Applicants request that the patent term adjustment indicated in the Notice of Allowance be corrected from three hundred sixty-three (363) days to four hundred twenty-five (425) days.

The request for reconsideration of the patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is three hundred sixty-three (**363**) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On June 16, 2005, the Office mailed the Notice of Allowance with a Patent Term Adjustment of 363 days. On September 21, 2005, applicants timely<sup>1</sup> filed the instant application for patent term adjustment. Applicants request that the 62-day reduction be corrected to 0 days as applicants' amendment, filed on March 21, 2005, was expressly requested by the examiner during a telephonic interview initiated by the examiner. In support thereof, applicants supplied a copy of the "Examiner-Initiated Interview Summary" covering the substance of the telephonic interviews conducted on February 20 and March 16, 2005.

Applicants disclose that this application is subject to a terminal disclaimer.

Applicants' argument is well-taken. 37 CFR § 1.704(c) provides that:

Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or

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<sup>1</sup> PALM records indicate that the Issue Fee payment was also received on September 21, 2005.

examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(8) Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed.

A review of the application record confirms that the amendment, filed on March 21, 2005, was in response to a request made by the examiner during a telephonic interview initiated by the examiner on February 10, 2005. Therefore, this amendment does not trigger a reduction in PTA as it constitutes a supplemental reply or other paper expressly requested by the examiner.

For the record, the Office has confirmed that the second preliminary amendment filed on April 18, 2005 was also filed in reply to an express request made by the examiner during a telephonic interview on April 8, 2005. Thus, the PTA calculations for this application are correct in not entering a period of reduction in connection with this filing. See 37 CFR § 1.704(c)(8).

In view thereof, the patent term adjustment at the time of the mailing of the Notice of Allowance is FOUR HUNDRED TWENTY-FIVE (425) days.

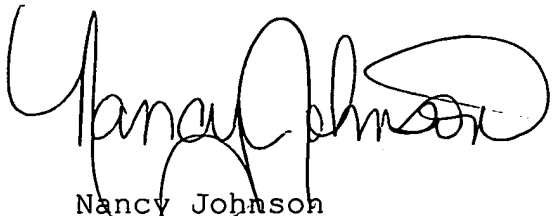
The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office of Patent Publication has been advised of this decision. The application is, thereby, forwarded to the Publishing Division for processing into a patent. The patent term adjustment indicated on the patent will include any additional patent term accrued for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, as well as, any additional patent term accrued for the Office taking in excess of three years to issue the patent<sup>2</sup>.

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<sup>2</sup> Applicants are reminded that: If an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See

Telephone inquiries specific to this matter should be directed to the undersigned, at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with a large loop at the end.

Nancy Johnson  
Senior Petitions Attorney  
Office of Petition

Enclosure: Copy of REVISED PAIR Screen

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also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004). As 522 days have already been entered for grounds specified in § 1.702(a)(1) and § 1.702(a)(2), no additional patent term will be entered for the Office taking in excess of three years to issue the patent unless the number of days of delay exceed 522 days.